Family Foods, Inc. *and* Janie Albright *and* Local 539, United Food and Commercial Workers International Union, AFL–CIO–CLC *and* Local 951, United Food and Commercial Workers International Union, AFL–CIO–CLC. Cases 7–CA–27504, 7–CA–27630, 7–CA–27682, 7–CA–27736, 7–CA–27866, 7–CA–28053, and 7–RC–18486

October 31, l990

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On June 13, 1989, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party Local 951 filed cross-exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions[3] as modified, to modify the remedy, and to adopt the recommended Order as modified and set forth in full below.

1. The judge found that Store Manager Cunningham unlawfully created the impression of surveillance when he told employee Robin Cooke that he knew she was a union supporter because he had seen her pass out union cards. Cooke testified that she saw Cunningham look directly at her when she was passing out cards in the breakroom. Therefore, Cooke could not have reasonably concluded that unlawful surveillance was the source of his knowledge of her union activities. Thus, we find that the Respondent did not violate the Act in this respect. See *Aero Corp*., 237 NLRB 455 fn. 2 (1978).

2. The judge found that Tom Duthler Sr. unlawfully granted benefits to employee Ron Darner by telling Darner that he could see Duthler's eye doctor and by offering to speak to the store manager about a loan for Darner. Concerning the eye doctor, the evidence is insufficient to establish that Duthler offered to pay for the visit or that this suggestion constituted the granting of a benefit to Darner. In these circumstances, we find no violation of the Act. Concerning the loan, Duthler testified that the Company had helped employees out in this manner in the past. Thus, we find that Duthler

[1] The Respondent asserts that the judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *NLRB v. Pittsburgh Steamship Co*., 337 U.S. 656, 659 (1949), ''[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact. Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We find no basis for reversing his findings.

[2] The judge made some apparently inadvertent errors, which we shall correct. He failed to note that the Respondent filed a first amended answer to the second consolidated complaint in which the Respondent admitted the agency status of Terrill Dykstra, and the judge failed to rely on that admission when finding that Dykstra was the Respondent's agent. He also failed to note that the General Counsel amended the complaint to allege that the Respondent violated Sec. 8(a)(3) and (1) of the Act by refusing to allow former Harding's employees to reapply for employment until after the union election. In sec. B,2, par. 7 of his decision the judge found that Bob Cole asked employee Wallace about Ron Darner's union activity. The record shows that this conversation involved employee Bonnema rather than Wallace. In fn. 18 of his decision, the judge incorrectly stated that the General Counsel made no allegation that the Respondent violated Sec. 8(a)(3) when in fact the General Counsel made no 8(a)(5) allegation. In sec. C,1, par. (j) the judge incorrectly referred to Shawn Schlee as Sharon Schlee.

[3] Consistent with the Board's decision in *Resistance Technology*, 280 NLRB 1004 (1986), enfd. 830 F.2d 1188 (D.C. Cir. 1987), we do not agree with the judge's findings that Tom Duthler Jr.'s instructions to Store Manager Dykstra to interrogate job applicants about their union sympathies were unlawful in and of themselves. See also *Castaways Management*, 285 NLRB 954–957 (1987), enfd. 870 F.2d 1539 (11th Cir. 1989). We do, however, find that the carrying out of these instructions was in violation of Sec. 8(a)(1). We shall amend the judge's recommended Order accordingly. In Member Cracraft's view, it is Dykstra's interrogation of job applicants that violated Sec. 8(a)(1) of the Act. She would not find Dykstra's ''carrying out'' of a management directive to be an additional unfair labor practice and would overrule *Resistance Technology* to the extent it is inconsistent with her position. However, for institutional reasons, she will apply precedent here.

Chairman Stephens did not participate in *Castaways Management*. Consistent with his partial dissent in *Resistance Technology*, he would affirm the judge's finding that Tom Duthler Jr.'s conduct in instructing Dykestra to commit an unfair labor practice was unlawful, and constituted a violation of Sec. 8(a)(1) separate from Dykstra's actions in carrying out those instructions; he would also, therefore, adopt the judge's recommended Order on this issue.

The Respondent excepts to the judge's failure to cite or apply the analysis contained in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1983), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), in connection with his 8(a)(3) findings. We find that, both with respect to his findings concerning Respondent's discriminatory failure to hire and his conclusions regarding the discharge of Lurleen Martin, the judge tacitly set forth the General Counsel's prima facie case and the Respondent's failure to rebut it. Therefore, we find that the judge's discussion fully satisfies the analytical objectives of *Wright Line* and no purpose is served by recasting his findings to achieve formalistic compliance with the *Wright Line* analysis.

We find it unnecessary to pass on the judge's finding that Night Manager Steve Klok unlawfully interrogated employee Jerry Wallace. In light of our other conclusions, such a finding would be cumulative and would not affect the remedy.

For the same reason, Chairman Stephens finds it unnecessary to pass on the allegation that Grocery Manager Bob Cole unlawfully interrogated employee Wallace. As to other interrogation findings excepted to by the Respondent, Chairman Stephens finds them supported under *Rossmore House*, 269 NLRB 1176 (1984), and *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), because they occurred in the course of conversations in which the interrogating supervisor or manager also made other independently coercive statements.

The judge found that Store Manager Jeff Wellman created the impression of surveillance in his conversation with Carol Laude. In its exceptions, the Respondent contends that the complaint did not contain such an allegation, but merely alleged an unlawful interrogation regarding this conversation. In agreeing with the judge's conclusion, we note that Wellman corroborated Laude's testimony and find, therefore, that the allegation was fully and fairly litigated.

The judge found that Cathleen Dean was unlawfully interrogated by the ''Stadium Road Store Manager'' and that the same person told her to put on her job application that she was not a union member. These allegations were not in the complaint. Because Stadium Drive Store Manager John Renema was not asked about this conversation, we find that these issues were not fully litigated, and we reverse the judge's findings in this regard.

was merely informing Darner of an existing benefit and there was no violation of the Act.[4]

3. In agreeing with the judge's finding that Lurleen Martin[5] was discriminatorily discharged, we note the evidence of disparate treatment referred to by the judge. Prior to Martin's discharge, no employee had been fired for insubordination. The record contained evidence that three employees were insubordinate and received either no discipline or an oral reprimand. Lyn Thomas refused a direct order to place some meat on a tray, stating that she was ''sick and tired'' of traying meat and she did not feel it was her job. She was never reprimanded or disciplined. Meatcutter Rob Groenweld refused an order to work the counter area, stating that he was not going to work the counter area anymore. The next day the meat manager told him he would have to work the counter sometimes; that was the end of the incident and Groenweld received no discipline. Employee Sherri Flipin's personnel file contained six disciplinary notations, including one for insubordination (refusal to wear her smock), which were penalized by warnings and suspensions.[6]

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, we shall order that the Respondent cease and desist therefrom and take certain affirmative action to effectuate the purposes of the Act. Because the violations of the Act committed by the Respondent are widespread and of such an egregious nature that they evidence a general disregard for its employees' statutory rights, we find that a broad injunctive order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

We shall order that the Respondent offer Lurleen Martin immediate and full reinstatement to her former postition or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority rights or to other benefits that she may have enjoyed. We shall further order that the Respondent remove from its files any reference to the unlawful discharge and notify her in writing that this has been done and that the discharge will not be used against her in any way.

We shall order that the Respondent offer employment to all former employees of Harding's Friendly Foods, who openly sought employment and who would have been hired but for the Respondent's unlawful discrimination, to positions into which they would have been hired[7] or, if those positions no longer exist, to substantially equivalent positions, dismissing, if necessary, any persons hired to fill such positions. We shall also order the Respondent to make all the discriminatees whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful discrimination against them. Backpay shall be computed in accordance with the formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Family Foods, Inc., Kalamazoo and Muskegon, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities or the union activities of other employees.

(b) Promising increases in wages and benefits in order to dissuade employees from voting for a union.

(c) Threatening to close stores or sell the business in reprisal for union activities.

(d) Interrogating job applicants concerning their union sympathies.

(e) Telling employees that they are not going to be hired because a union filed a representation petition or because the Company had imposed a quota on the hiring of union members.

(f) Threatening to discontinue existing employee benefits if employees become unionized.

(g) Threatening to reduce or eliminate existing job security protections if employees vote for a union.

(h) Stating that unionization is an act of futility because the Respondent would engage in surface bargain-

[4] The judge found that the Respondent unlawfully interrogated Darner, bought him meals and conferred unprecedented attention on him, and promised to avoid giving his son, who had been fired for theft, an unfavorable reference. The Respondent contends that these findings go beyond the allegations of the complaint. We find that the issue of the meals and the unprecedented attention was neither alleged in the complaint nor fully litigated, and we decline to find these violations. We find it unnecessary to pass on the interrogation allegation because the remedy would be cumulative. Concerning the unlawful promise regarding Darner's son, we note that the complaint alleged a promise to employ the son. In adopting the judge's finding that the promise to avoid giving the son an unfavorable reference violated the Act, we find that this issue was related to the subject matter of the complaint and fully litigated.

[5] On June 26, 1989, the judge issued an errata correcting his use of the name ''Wallace'' for discriminatee Martin.

[6] We find it unnecessary to rely on the judge's statement that a day off would have settled the incident of Martin's insubordination if upper management had not become involved.

[7] We agree with the judge's finding that the class of discriminatees does not need to be identified until the compliance stage of the proceeding. *Kessel Food Markets*, 287 NLRB 426 fn. 26 (1987), enfd. 868 F.2d 881 (6th Cir. 1989). We, therefore, find it unnecessary to pass on the General Counsel's exceptions seeking to add various names to the class.

The complaint alleged that the class should include ''applicants . . . currently unknown.'' The judge extended the remedy to ''every former employee'' of Harding's Friendly Foods. We find the judge's class description overly broad. *KRI Constructors*, 290 NLRB 802 (1988). *O'Neill, Ltd.*, 288 NLRB 1354, 1356 fn. 16 (1988). Because the record indicates that submitting a written job application may not have been necessary in order to be considered, we shall, consistent with the General Counsel's position, define the class as all former Harding's Friendly Foods' employees who openly sought employment with the Respondent at the Oshtemo and Portage stores.

ing and use legal maneuvers to forestall and delay meaningful collective bargaining.

(i) Soliciting employee grievances with a view toward adjusting them.

(j) Promising employees or their relatives benefits in order to persuade them to vote against a union.

(k) Asking employees to campaign against a union.

(l) Imposing on employees an overly broad no-solicitation rule.

(m) Creating in the minds of employees the impression that their union activities are under surveillance.

(n) Discouraging membership in or activities on behalf of United Food and Commercial Workers International Union, AFL–CIO–CLC, Local 951 or Local 539, or any other labor organization, by discharging, refusing to hire, delaying the hiring of, or otherwise discriminating against employees in their hire or tenure.

(o) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Lurleen Martin immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority rights or to any other rights and privileges she may have previously enjoyed and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the amended remedy section of this decision.

(b) Expunge from its files any reference to Lurleen Martin's discharge, refrain from using this discharge or any related matters as a basis for future disciplinary action, and notify her in writing that this has been done.

(c) Offer all former employees of Harding's Friendly Foods who openly sought employment, and who would have been hired but for the Respondent's unlawful discrimination, employment in the positions in which they would have been hired or, if those positions no longer exist, to substantially equivalent positions, dismissing, if necessary, any persons hired to fill such positions.

(d) Make whole those former Harding's employees who would have been hired but for the Respondent's unlawful discrimination in the manner set forth in the amended remedy section of this decision for any loss of earnings and other benefits they may have suffered by reason of the Respondent's unlawful conduct.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Kalamazoo and Muskegon, Michigan locations copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the second consolidated amended complaint is dismissed insofar as it alleges violations not found here.

IT IS FURTHER ORDERED that Case 7–RC–18486 is severed and that the election conducted January 14, 1988, in Case 7–RC–18486 is set aside and a new election be held as directed below.

[Direction of Second Election omitted from publication.]

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coercively interrogate employees concerning their union activities or the union activities of other employees.

WE WILL NOT promise increases in wages and benefits in order to dissuade employees from voting for a union.

WE WILL NOT threaten to close stores or sell the business in reprisal for union activities.

WE WILL NOT interrogate job applicants concerning their union sympathies.

WE WILL NOT tell employees that they are not going to be hired because a union filed a representation petition or because the Company has imposed a quota on the hiring of union members.

WE WILL NOT threaten to discontinue existing employee benefits if employees become unionized.

WE WILL NOT threaten to reduce or eliminate existing job security protections if employees vote for a union.

WE WILL NOT state that unionization is an act of futility because we would engage in surface bargaining and use legal maneuvers to forestall and delay meaningful collective bargaining.

WE WILL NOT solicit employee grievances with a view toward adjusting them.

WE WILL NOT promise benefits to employees or their relatives in order to persuade them to vote against a union.

WE WILL NOT ask employees to campaign against a union.

WE WILL NOT impose on employees an overly broad no-solicitation rule.

WE WILL NOT create in the minds of employees the impression that their union activities are under surveillance.

WE WILL NOT discourage membership in and activities on behalf of United Food and Commercial Workers International Union, AFL–CIO–CLC, Local 951 or Local 539, or any other labor organization, by discharging, refusing to hire, delaying the hiring of, or otherwise discriminating against employees in their hire or tenure.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of rights guaranteed to you by Section 7 of the Act. Those rights include the right to form, join, or assist labor organizations, to bargain collectively through representatives of your own choosing, to engage in other concerted protected activities for your mutual aid and benefit, and to refrain from participating in any of those protected activities.

WE WILL offer Lurleen Martin immediate and full reinstatement to her former position or, if that job no longer exists, to a substantially equivalent position and WE WILL make her whole for any loss of pay and other benefits that she may have suffered by reason of the discrimination practiced against her, with interest.

WE WILL expunge from our files any reference to Lurleen Martin's discharge, refrain from using this discharge or any related matters as a basis for future disciplinary action, and notify her in writing that this has been done.

WE WILL offer to every former employee of Harding's Friendly Foods who was employed at their Oshtemo and Portage stores at the time we acquired those stores and who openly sought employment with us, who was not hired or offered employment when those stores were acquired because of our unlawful discrimination, employment in the positions in which they would have been hired or, if those positions no longer exist, to substantially equivalent positions, dismissing, if necessary, any persons hired to fill such positions, and WE WILL make them whole for any loss of pay and other benefits that they may have suffered by reason of the discrimination practiced against them.

FAMILY FOODS, INC.

A. Bradley Howell, Esq., for the General Counsel.
Gary P. Skinner, Esq. and *David E. Khorey, Esq.*, of Grand Rapids, Michigan, for the Respondent.
Christine A. Reardon, Esq., of Toledo, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FINDINGS OF FACT

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me upon a consolidated unfair labor practice complaint,[1] issued by the Regional Director for Region 7 and amended at the hearing, which alleges that Respondent Family Foods, Inc.,[2] violated Section 8(a)(1)

[1] The principal docket entries in the complaint cases are as follows:

Charge filed by Janie Sue Albright, an individual, against Respondent in Case 7–CA–27504 on November 24, 1987, and amended on December 3, 1987; Complaint issued by the Regional Director for Region 7 against Respondent on January 14, 1988; Respondent's answer filed on January 21, 1988; Charge filed in Case 7–CA–27630 by Local 539, United Food and Commercial Workers International Union, AFL–CIO–CLC (Meatcutters) on January 11, 1988, against the Respondent and amended on February 18, 1988; Complaint issued by the Regional Director for Region 7 against the Respondent on February 25, 1988; Respondent's answer filed on March 2, 1988; Charge filed in Case 7–CA–27682, by Local 951, United Food and Commercial Workers International Union, AFL–CIO–CLC (Clerks or Union) against the Respondent on January 21, 1988; Charge filed in Case 7–CA–27736 by the Clerks against the Respondent on February 10, 1988; Consolidated complaint issued against the Respondent by the Regional Director for Region 7 in the complaint cases and consolidated with a companion representation case on March 30, 1988; Respondent's answer to first consolidated complaint filed on April 1, 1988; Charge filed by the Clerks against the Respondent in Case 7–CA–27866 on March 16, 1988, and amended on April 5, 1988; Complaint issued by the Regional Director for Region 7 against the Respondent on May 3, 1988; Respondent's answer filed on May 6, 1988; Charge filed by the Clerks against the Respondent in Case 7–CA–28053 on May 6, 1988; Second consolidated complaint including all of the above charges issued by the Regional Director for Region 7 against the Respondent on September 28, 1988; Respondent's answer filed on October 5, 1988; Amended second consolidated complaint issued by the Regional Director for Region 7 against Respondent on December 5, 1988; Respondent's answer filed December 14, 1988; Hearing held in Kalamazoo, Michigan, on January 23, 24, 25, and 26, and February 7 and 8, 1989; Briefs filed with me by the General Counsel, the Charging Party, and the Respondent on or before May 3, 1988.

The principal docket entries in the representation case are as follows: Petition filed in Case 7–RC–18486 by the Clerks seeking an election in a bargaining unit composed of all the Respondent's regular full-time and part-time employees employed at four grocery stores located in and about Kalamazoo, Michigan, which were owned by the Respondent on that date; Stipulated Election Agreement approved by the Regional Director for Region 7 on December 3, 1988, calling for an election in a bargaining unit composed of six stores owned by the Respondent in the Kalamazoo, Michigan area, including two stores purchased during November 1988; Election held on January 14, 1989, which the Union lost by a vote of 181 to 148; Objections to the Conduct of the Election filed by the Union on January 21, 1989; Order consolidating the representation case with pending complaint cases issued by the Regional Director for Region 7 on March 30, 1988.

[2] Respondent admits, and I find, that it is a Michigan corporation which maintains its principal place of business in Grand Rapids, Michigan. In Grand Rapids and elsewhere in the State of Michigan the Respondent operates grocery stores which annually derive gross revenues in excess of $500,000 and which purchase and cause to be delivered from points and places outside the

and (3) of the Act. More particularly, the second consolidated complaint alleges that the Respondent coercively interrogated its employees and applicants for employment concerning their union activities and the union activities of other employees; promised revisions in wages if the employees rejected the Union; created in the minds of employees the impression that their union activities were the subject of company surveillance; threatened to close the store if it became unionized; told employees that selecting the Union as their bargaining agent would be a futile act; told job applicants they would not be hired because they were union supporters; refused to allow former Harding's employees to apply for employment until after the election was held on January 14, 1988, because of their union sympathies and membership; discharged Lurleen Martin from its Muskegon, Michigan store because of her union activities; refused to hire classes or groups of employees formerly employed by Harding's Friendly Foods at Oshtemo and Portage, Michigan, because of their union membership; and refused to give employees at its Stadium Drive store in Kalamazoo their periodic evaluations because they wished to intimidate them from supporting the Union. The alleged unfair labor practices taking place between October 30, 1987, and January 14, 1988, were also alleged by the Charging Party to be objectionable conduct warranting the setting aside of a representation election conducted on January 14, 1988. Respondent denies the allegation of independent violations of the Act, asserts that Lurleen Martin was discharged for insubordination, and that applicants for employment at its newly acquired stores in Oshtemo and Portage who had worked for the previous owner were not hired because of an assortment of individual reasons. The issues in this case were drawn on these contentions.[3]

A. *The Unfair Labor Practices and Objectionable Conduct Alleged*

1. The former Harding's stores at Oshtemo and Portage

Respondent operates a chain of nine grocery stores in western Michigan. It was organized in 1951 by Ben Duthler, who died in 1982. His son Thomas Duthler Sr. (Tom Sr.) is now the owner and chairman of the board of directors. Grandson Thomas Duthler Jr. (Tom Jr.) is now vice president in charge of human resources for the entire chain, a post he has held since July 1988. Before that time, Tom Jr. exercised similar functions under a different job title. Respondent maintains its headquarters in Grand Rapids, where it operates two of its nine stores.

One Family Foods store is located in Muskegon, and six can be found in Kalamazoo and its suburbs. Four of the Kalamazoo stores—Gull Road, Patterson, Stadium Drive, and the ''big'' South Westnedge Street store—have been owned by the Respondent for several years. The first seven of the Respondent's stores are not unionized. In November 1987, it opened two additional stores in Oshtemo and Portage, both of which are suburbs of Kalamazoo. These stores had been operated for many years as Harding's Friendly Foods[4] and were unionized. The three-member meatcutter unit at Oshtemo had been represented by Local 539 and was under a contract between Local 539 and Harding's at the time the sale to the Respondent took place. The rest of the Oshtemo store and the Portage store were separate bargaining units which were represented by Local 951. Both of these units were also covered by existing contracts at the time the sale to the Respondent took place.[5]

The actual transfer of ownership of the Oshtemo store took place on Monday, November 9, 1987, even though the contract of sale had been concluded some weeks earlier. Respondent took control of the Portage store on November 3. Until November 9, employees at Oshtemo were working for Harding's under the supervision of Store Manager Terry Dykstra, who continued on as store manager for the Respondent for a period of about 6 weeks after the changeover.[6] At the Portage store employees continued to work for Harding's under the supervision of Clare Hanson, who was retained as assistant store manager after the changeover. During this same period of time, Local 951 filed a representation petition seeking an election among the regular full-time and part-time employees at the four existing Family Foods stores in Kalamazoo. The scope of the unit requested by the Union was expanded at the Respondent's request and was incorporated into the Stipulated Election Agreement as a six store unit—the four existing Family Foods outlets and the two new ones which had just been purchased from Harding's. Simultaneous with the organizing drive in Kalamazoo came the beginning of a similar effort in Muskegon by the same union and the filing of a representation petition on January 11, 1988, covering all employees at the Respondent's Muskegon store.[7]

On October 23, Dykstra was informed by Rich Arbruster, Respondent's vice president for store operations, that he would be retained as the Oshtemo store manager.[8] Assistant Manager Jerry Roberts and Meat Department Manager Ron Scheffler were similarly notified. However, interviews for other positions were conducted by Tom Duthler Jr., who

State of Michigan goods and merchandise valued in excess of $10,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Local 951 and Local 539, and each of them, is a labor organization within the meaning of Sec. 2(5) of the Act.

[3] Certain errors in the transcript are noted and corrected.

[4] Harding's was actually a trade name for a grocery chain called Spartan stores.

[5] The contract covering the Portage store excluded by its terms any meatcutters, as did the contract at Oshtemo. However, there is no evidence that Local 539, the Meatcutters Local, actually represented any of Harding's employees at Portage.

[6] Dykstra then quit and went to work for another grocery chain.

[7] The petition at the Muskegon store (Case 7–RC–18533) has never resulted in an election because it was blocked by the filing of one of the charges in this case which involves the Muskegon store.

[8] While no formal announcement was made by the Respondent to employees of Dykstra's appointment, it is clear from the record that everyone in the store knew about it. Certainly Dykstra told Harding employees that he would be the new manager. He sat in during interviews of Harding employees who were seeking jobs with the Respondent and made recommendations to Tom Jr. concerning the ability and desirability of these job applicants, all of whom he had worked with for a long period of time. Tom Jr. did the hiring for the Respondent at the Oshtemo store but he gave some weight to recommendations by Dykstra. Certainly an unfavorable recommendation—and there were two of them—largely nullified any change a Harding's employee might have in finding work under the new management. Dykstra attended a meeting of Family Foods supervisors at the Grand Rapids headquarters on November 3, some 6 days before the changeover and while he was still a Harding's store manager. I conclude that from the time Dykstra was informed that he would be carried over as the new manager he became a supervisor or at least a nonsupervisory agent of the Respondent for whose acts and words the Respondent is legally responsible.

came to the Oshtemo store on October 28 for that purpose. In advance of his visit, Tom Jr. had furnished Dykstra with Family Foods employment applications and asked Dykstra to circulate them to every Harding's employee at Oshtemo who wished to go to work for the new owner. At that time the store employed about 46–49 full-time and part-time employees, 3 in the meat department and the rest in a storewide unit. A notice was posted informing employees that Tom Jr. would be present on October 28 for interviews. Many of these interviews he conducted in the presence of either Dykstra or Roberts.

According to Tom Jr., he received 37 written applications from Oshtemo job applicants and interviewed 30 people. Dykstra said that 40 or 42 of the Harding's Oshtemo employees had applied for jobs with the Respondent. There is a dispute, which need not be resolved in this proceeding, as to whether there may have been additional applicants whose application forms were not produced in pursuance of a subpoena served on the Respondent. The interviews were perfunctory in nature and were the subject of brief notes made by Tom Jr. which are in evidence. Tom Jr. was not the only official of the Respondent to visit the store. During the week of November 1, Rich Bouwknegt, the vice president for perishable operations and the meat supervisor for the Respondent's entire chain, visited the Oshtemo store, inspected the meat department, found that it was profitable and well run, and said that he wanted to keep all the employees who were working in that department. In fact, Bouwknegt made a decision to hire every meat department employee and passed the word along through Scheffler, the meat department manager at Oshtemo, that they would all be hired.[9] This action provoked an internal turf battle at the Respondent's headquarters, with Tom Jr. going to Company President Jack Duggan and insisting that it was his prerogative to determine who would and would not be initially hired, regardless of what the meat supervisor or any other supervisor might want.[10] In this dispute between a vice president and the son of the chairman of the board, Tom Jr. won and Bouwknegt was told to stay out of the hiring process. Gerritt Boogholt, a full-time meatcutter who had worked over 30 years for Harding's, was among those interviewed by Tom Jr. on October 28. Boogholt came highly recommended, and Tom Jr. testified that he originally had decided to hire him. Tom Jr. also interviewed Martha Lang and Luwanda Mast, two meat wrappers, who constituted the balance of the meat department. After the interviews were completed, Tom Jr. went over the list of applicants with Dykstra. Dykstra made specific recommendations relating to particular applicants. When Dykstra made a favorable recommendation, Tom Jr. wrote ''yes'' next to the name on his note pad. He also placed a ''no'' next to some names. He asked Dykstra if there were any applicants whom Dykstra did not want. Dykstra made specific recommendations against two baggers who were earning close to the minimum wage. He told Tom Jr. he would recommend the hiring of every employee listed in the interview notes next to whose name Tom Jr. had placed either a ''yes'' or a question mark. There were about 25 such individuals. The only detailed discussions between them related to employees for whom Tom Jr. had placed a ''no'' on his interview sheets. Tom Jr. testified that he had made a tentative judgment to hire 25 Oshtemo employees listed on his interview sheet. On November 5 he told his attorney of this plan in a phone conversation which Dykstra partially overheard, whereupon Tom Jr. told Dykstra immediately that he would be hiring only 15 or 16 former employees. He also testified that there were about 12 applicants who were never seriously considered.

As things turned out, the Respondent hired about 15 or 16 ex-Harding's employees when it opened the Oshtemo store under its own name on November 9. Respondent had placed ads in local papers and in its other Kalamazoo stores for new part-time and full-time employees. A ''help wanted'' sign was also posted conspicuously in the Oshtemo store. When the store opened, the Respondent had in fact hired 13 former Harding's employees out of an initial complement of 36. In the meat department it hired only one of the three bargaining unit members. Boogholt and Mast were told that they were not going to be hired after first being informed by Dykstra that they would be hired. However, three of the four employees from Harding's deli department were hired and were on the Respondent's payroll on opening day.

The Respondent's mode of operation, both at Oshtemo and at Portage, differed from Harding's. Harding's was open from 7 a.m. to midnight, 6 days a week, and from 8 a.m. to 10 p.m. on Sundays. The Respondent is open 2 hours a day, 7 days a week. During December, the Oshtemo store increased from 36 to 55 employees and now has a complement of 70–75 employees. Its proportion of full-time to part-time employees is different from the Harding's operation. Harding's maintained an approximate 50–50 ratio between full-time and part-time employees, while the Respondent aims at employing only about 20 of its staff on a full-time basis. A majority of the Respondent's employees at Oshtemo on November 9 were transferees from other Family Foods stores or new hires. As a result, about 33–35 of Harding's 49 Oshtemo employees were laid off. Some of the transferees from the Respondent's other stores were employed at Oshtemo for only very short periods of time in November 1987, and then returned to their regular places of employment.

The former Harding's store on South Westnedge Street in Portage (not to be confused with the Respondent's ''big'' South Westnedge store in Portage located further out from the center of Kalamazoo) had a complement of 30 employees during the Harding's operation. Tom Jr. visited the Portage store sometime shortly after the opening of the Oshtemo store for the purpose of conducting interviews of Harding's Portage employees who wanted to work for the Respondent. He testified that, contrary to his practice at the Oshtemo store, he did not provide Portage employees with written application forms in advance of his visit but merely asked Hanson, the store manager, to post a notice notifying employees of the time and date of interviews.[11] However, three Harding's employees at Portage credibly testified that they did

[9] Bouwknegt also spoke directly with Mast and thanked her for deciding to stay on with the Respondent.

[10] Tom Jr. testified repeatedly that it was his job to select the initial complement of employees both at Oshtemo and at Portage, and the responsibility of the respective stores managers to hire rank-and-file employees once the new operations got underway.

[11] The Respondent produced no applications filled out by job applicants at Portage who were seeking employment with Family Foods. Whether it fully complied with the General Counsel's subpoena demanding production of all application forms at Portage is also a matter which need not be resolved in this proceeding.

in fact fill out written application forms seeking jobs with the Respondent and a fourth applicant said that she filled out a Family Foods employment application. Tom Jr. testified that he interviewed 15 out of the 30 Portage employees and that the remainder did not appear at the appointed time and place for interviews. He hired 6 of the 15 who were interviewed, 1 of whom ultimately rejected the job offer. The other nine applicants who were interviewed were not hired. When the Portage store opened on November 29, 5 Harding's employees remained in the Respondent's initial complement of 20.[12] As in the case of the Oshtemo store, the Portage store rapidly increased its employee complement under the Respondent's new personnel policies. There are now about 35–40 employees at that location.

The Union filed a representation petition seeking to represent the employees at four of the Respondent's Kalamazoo stores on October 30, just 2 days after Tom Jr. had conducted job interviews at Oshtemo. On November 4, some 5 days before the Oshtemo store was to open under new management, Tom Jr. phoned Dykstra and asked him if there were presently two unions in the Oshtemo store. Dykstra informed Tom Jr. that there was a separate union for the meatcutters and asked if this would affect the hiring of any employees. Tom Jr. said that he did not know but it was something that they would have to talk over. I credit Dykstra's testimony that Tom Jr. told him that his lawyer had informed him that the Company could not hire more than half of the Harding's employees at the Oshtemo store or else they would have to recognize the Union. Tom Jr. denies that his lawyer gave him such information, but he admits saying to both Dykstra and Roberts that, if more than 50 percent of the store were made up of Harding's employees, the Respondent would have to bargain with the old union. Tom Jr. also admits that he instructed Dykstra to ask job applicants how they felt about unions after Dykstra began to conduct interviews following the reopening of the store. Dykstra said that Tom Jr. said that it was a good question to ask, reminding him that there was an election coming up. He carried out these instructions and asked job applicants their feelings concerning unionization during the period of time that he was store manager. He conducted a great many such interviews since the Respondent was trying to enlarge its Oshtemo store from 25 to 60 employees within a short period of time.[13] After the initial selection of Harding's employees had been made, Tom Jr. told Dykstra not to accept any of their applications until later, adding that ''we could look at them'' after January or February. Dykstra hired about 25 or 30 new employees during the Respondent's first 2 weeks of operation at Oshtemo. He testified without contradiction that only about one-third of the new hires had any grocery store experience.

A number of Harding's employees had been told by Dykstra that they would be hired by the Respondent. After Tom Jr. had received word that he could carry over only 15 or 16 people, Dykstra had to tell a number of employees that they would not in fact be able to go to work for the Respondent. He felt that the Respondent's change of plans was due to the fact that the Union had filed a representation petition just 2 days after the Oshtemo interviews had been conducted, and this is what he told several employees. On the Saturday before the new operation began, Boogholt was told by Scheffler, in Dykstra's presence, that he would not be kept on despite an earlier assurance that he would be hired. He told Boogholt that, if the Respondent kept everyone, they would have to have a union and they did not want one. Scheffler also informed him that Luwanda Mast was being terminated and that Martha Lang would be hired by the Respondent. Boogholt then asked Dykstra if they could work something out, even offering to take a transfer to another store. Dykstra replied that it would not do any good to talk to the Respondent's management because they did not want a union at the Oshtemo store.

Dan Buell, a bagger, was laid off by Harding's at Oshtemo in November and was later hired by the Respondent in January 1988. A week after the store had opened under new management, he came back and asked Dykstra for a job. Dykstra told him to return in December. He then revised this suggestion, telling Buell to return in January after the election. Buell did so and was hired. Harding's employee Barbara Palmer asked Dykstra just before the changeover whether she would be hired. Dykstra replied that it did not look good because the Union had just filed a representation petition. In a conversation with Dorothy Chopp, Carol Hill, Barbara Ryan, and others in the breakroom at the Oshtemo store, Dykstra said ''I guess your union has really screwed you because the attorneys for Family Foods are now telling them that they can't hire as many people [as] they thought they could.''

I credit the testimony of Janie Albright, a former Harding's employee, who was initially hired by the Respondent when the Oshtemo store was reopened. During an interview with Tom Jr., which took place before this event, she disclosed to him that she was antiunion and asked him whether the Respondent would operate the store with a union or without one. Tom Jr. replied by asking her what the general attitude of the employees was on this issue. Albright replied that they were upset with the Union because they felt it had sold them out. She was referring to the fact that Harding's had sold the store and many employees were being left without jobs. Shortly after the store opened, Albright asked Tom Jr. if he would hire her sister, Luwanda Mast, a meat department employee who was not rehired. Tom Jr. refused. She also asked him whether the Respondent would rehire another employee, Stephen Engberts. Tom Jr. also refused. To press her point, Albright offered to transfer to another store if the Respondent would hire Engberts. Tom Jr. said that the Respondent's plan for her was to work at Oshtemo for a short while and then transfer to a prounion store for the purpose of talking against the Union during the campaign. Albright

[12] The General Counsel has proceeded on the theory that he does not have to name each and every discriminatee denied employment by the Respondent, contending that employees at both stores were denied employment as a class and that the names of the individuals composing both classes can await the compliance stage of these proceedings. However, in the response to an order from me, he named 13 alleged discriminatees at Oshtemo and 5 alleged discriminatees at Portage. They are: (at Oshtemo) Dan Buell, Dorothy Chopp, Robin DeBoer, Carol Hill, Cheryl Munson, Barbara Palmer, Kevin Rice, Stephen Engberts, Michael Sackett, Cathleen Dean, Gary Fredericks, Elizabeth Merkle, and Sam Morrison; (at Portage) Mary Bonhomme, Leona Fox, Claude May, Patricia Taylor, Louise Wentzel, and Tammy Tobalt-Wright.

[13] Tom Jr. testified that the Respondent wanted a smaller staff at Oshtemo during the startup period immediately after November 9 because it had traditionally experienced a drop in business when it took over the operation of a store from another owner. His testimony conflicts with Dykstra's testimony as well as with the hiring practice which was followed at Oshtemo. He produced no corroboration or support for this controverted statement and I discredit it.

asked why she could not transfer immediately and give Engberts her job, arguing that Engberts needed the job because his wife was dying of cancer. Tom Jr.'s reply to her was that he could not do so because his attorneys had advised him that he could only hire 15 former Harding's employees at Oshtemo because of the Union, and that number was all he was going to hire.

Several former Harding's employees were given jobs or promised jobs by the Respondent after the January 14 election. Palmer, a former Oshtemo employee, continued to shop at that store after she was laid off. On one such occasion she ran into Respondent's president, Jack Duggan, whom she had met casually during the transition period between the Harding's and Family Foods operations. Duggan asked her if she was shopping, she replied that she had come to the store to get a medical form. He asked if he could speak with her outside. When they were in the parking lot, he gave her his business card, told her to give him a call ''when all this blows over,'' and then shook hands with her. Before the changeover Michael D. Sackett, a part-time bagger, filled out a Family Foods application and gave it to Dykstra. He was not interviewed by Tom Jr. and was not immediately hired. During the last day of his employment with Harding's, he tried to file a second application but was told by Dykstra that he could not do so because he had a pending application on file which had a 30-day validity and he could not have two active applications on file at the same time. A week later Sackett returned and wanted to file another application. Dykstra told him that the normal 30-day validity for an application had been extended to 60 days, so Sackett filled out a second application and postdated it to January 6. He was rehired early in February by the new store manager without an interview.

Robin (Wilcox) DeBoer was interviewed by Tom Jr. at the Oshtemo store but was scheduled to be absent during the final days of the final week of the Harding's operation because she was taking time off to get married. On Wednesday of that week, she asked Dykstra to tell her if she was going to be hired by the Respondent. He said that she would be hired but that he could not promise that she would still be in the general merchandise department where she had been department manager. He told her to report to work the following Monday at 5 a.m. to take inventory and she did. After working a full day, she was laid off by Jerry Roberts, the assistant store manager, who had been carried over into the same position by the Respondent. He told her that the discharge was nothing personal but that Family Foods lawyers had gotten together and decided that they could hire no more than 15 Harding's employees at Oshtemo.[14] She asked if this decision was made because of the Union; he replied that he could not say yes or no, but that he would do what he could to get her back in. He told her to give him a call in a week. On November 13, Dykstra called DeBoer and said he had something for her. He asked her to come in to discuss it. She did and was given a job as a cashier at $6 an hour. She accepted the position and continued until January, when she quit to work elsewhere.

Kevin Rice, a member of the night crew, was not rehired by the Respondent. He testified without contradiction that, just before he was laid off, Dykstra told the night crew that the Respondent had planned to continue the night crew but now was not going to be able to do so ''due to your great union.'' The reference was to the fact that the Union had just filed a representation petition. Dykstra suggested that these employees go to the Family Foods store on West Main Street and speak to the manager at that location, since he needed more stockers. On November 4, Dykstra told Carol Hill that she was not going to be hired by the Respondent because the Company was only going to hire 15 Harding's employees. He suggested that she apply after January 1 but gave her no reason for his suggestion.

Cathleen Dean, a bagger and cleaner at Oshtemo, had been told by Dykstra that she did not have ''to worry about'' her job. On the Sunday before the Respondent took over, Dykstra told her that ''we were told we have to cut ten more people due to a union vote'' and that she would not be hired by Family Foods. When she applied for a job at the Respondent's Stadium Drive, she disclosed to the manager that she had previously worked for Harding's. Like other jobseekers, she took a math test as part of the job application process. In the course of an interview with the Stadium Drive store manager,[15] he asked Dean how she felt about a union and whether she would vote for one. She replied that she had no strong feelings for or against unions, adding that she had not joined a union at Oshtemo because she had received some union papers in the mail just as she learned that the store was going to close, so she did not bother to fill them in. The manager told her to write ''I am not a union member'' on her job application form. He also told her to call if she did not hear from him by Monday and indicated that her application would be forwarded to Dykstra at Oshtemo. Dean called him back a couple of days later to ask what had happened to her application and was told by the Stadium Drive store manager that he was still trying to get her a job. She never heard anything further concerning the application and was never hired. However, her father, Harold Reynolds, was hired at Oshtemo to do the same job she was doing—bagging groceries—and has been working there for over a year.

Another unsuccessful applicant was given similar information by Dykstra. On or about November 6, Dykstra was speaking with Front-end Manager Tim Johnson and employee Sharon Schlee. He told them that Family Foods's attorneys had phoned and said that the Respondent could only accept 13–15 employees so they could keep out the Union.

2. The other stores in the Kalamazoo area

I credit the testimony of Amy Iciek, a bagger and produce clerk at the Stadium Drive store, that just before the election on January 14, 1988, she had a conversation concerning the unionization of that store with John Renema, the store manager. It took place in the produce prep room. Renema asked Iciek how she was going to vote in the forthcoming election. Iciek replied by asking Renema if she was obligated to tell him. He said that she was. She then asked if she would be fired, and he replied that she would not. She said that she was not sure but she was leaning toward voting for the Union. He asked her why, and she replied that unionization would mean an increase in wages and improved working

[14] Roberts was not called to testify, so DeBoer's testimony is uncontradicted in the record.

[15] Presumably this individual was John Renema.

conditions. Renema suggested that she talk with other employees who had worked in union stores, stating that she should not make a dumb decision by voting for the Union. ''You are a smart girl; make a smart decision.''

On the following day Renema again asked her if she had thought about their discussion on the previous day. Iciek said that had she done so but was still uncertain as to how she was going to vote. He brought her into the backroom to talk with another employee named Brett. In her presence, Renema asked Brett how he was going to vote. Brett replied that it would depend on his evaluation. Renema said that they could not give everyone an evaluation before the election because the Union would claim that the Company was committing unfair labor practices. He asked Brett what happened when he got his first paycheck as an employee in a union store. Brett replied that there was only a couple of dollars in the check because the rest of the money had been deducted for union dues. Renema then turned to Iciek and asked if her working conditions at the Stadium Drive store were really so bad. He then told her privately that if employees got a union in the store they would lose a lot of privileges; such as eating, drinking, and listening to the radio in their department. He also said that in a unionized store employees could be fired for working off the clock or picking up a piece of lettuce and putting it on a shelf or by helping anyone working in a different department.

Robin Cooke, a baker in the ''big'' South Westnedge Street store, testified credibly that the former store manager, Mitch Cunningham, spoke to her at length on October 12, 1987, concerning the union drive at the store. She stopped by his office in the store at his request and spoke to him alone in that location. He asked her if she had heard any union talk, adding that he did not know why employees were unhappy. He then asked her what he, as a manager, could do to make things better. Cooke replied that the problem was not with him but with the top management of the store. Cunningham then asked her what were the main issues. Cooke replied that problems were different for employees in different age groups. He also asked her if she had heard anything about the Company's new wage program. She said she had not heard anything, and asked Cunningham about it. He replied that Tom Jr. had done most of the work on it and that a couple of individuals were working on it were on vacation. She asked what it would do for employees. He said he did not know much about it, except that it would raise wage caps on employees who were ''capped out.'' He told her that, if the store went union, two employees would be earning the same amount of money even if one did not work as hard as the other. An employee who worked half as hard would receive the same pay as anyone else because the ''union protects people like that.'' Cunningham told her that senior employees were complaining about working on Saturday but they would still have to work Saturdays if a union came in. He denounced the employees at the South Westnedge store for being selfish and lazy and for palming off work on others. He said they should be willing to work on their days off and to stay over when asked, adding that this was the kind of employee he was looking for. He went on to describe his experience in a union store in Muskegon where he had worked as a meatcutter. According to Cunningham, there was a union in that store but eventually the employees voted it out. He also told her that ''union representatives only came around once a year and that members had to pay double and triple dues whenever the strike fund was low, even though they got nothing extra.''

Cunningham went on to tell Cooke that he had heard bad things about her in the store, but he refused to disclose who had said them. However, he assured her that as far as he was concerned she was doing a good job. He also said that the presence of a union would make his job easier because an employee could be fired easily if he did not meet store standards or did not follow store rules. He disparaged unionism because it meant that he could not work one-on-one with employees but would have to go through third persons. Cunningham also told Cooke that he knew she was a union supporter because he had seen her pass out union cards. She testified that in July 1988 all employees received wage increases, including those in wage scales who had ''capped out.''

During the preelection campaign which was directed at employees in the Kalamazoo area, Jerry Wallace, an employee at the Gull Road store, attended an employee meeting held on November 17, 1987, at a restaurant called The Birches. The meeting was sponsored by the Respondent and featured the Respondent's labor consultant as a speaker. When Wallace returned to the store, Steve Klok, who was the night manager, asked him what he thought of the meeting. Wallace replied that there had been no surprises. Klok then stated that if a union came in the Respondent would close some of its stores. Wallace's reply was: ''If it happens, it happens.'' Klok went on to suggest that Wallace look at what happened at Harding's. Wallace's reply was that, according to the newspapers, Harding's problems came about because of a ''conflict of interest'' by Spartan stores. Klok then moved on to another subject. He told Wallace that union dues would be $20 a month. Wallace replied that in such an event he would be making $8.50 or $9 an hour to make up the difference. Klok then argued that the initiation dues were $75, and if a union came in the employees would not have a contract until March or April 1989. Wallace asked Klok for the source of his information, and Klok replied he had heard it at a management meeting which had been held earlier in the day. At that meeting he was told that a contract could be delayed through legal maneuvers.

Robert Bonnema was working for the Respondent at its ''big'' South Westnedge Street store in October 1987. At that time, Store Manager Mitch Cunningham spoke to him in the office about the disadvantages of unionization. Cunningham told Bonnema that he had worked at a union store and that unionization was no good. He mentioned that the initiation fee was $125 and that it was especially tough on part-time employees, who took home only 25 cents or 52 cents out of their first paychecks. Cunningham went on to say that unionization would make his job easier since it would be easier to fire people. In the event of a discharge, a union representative would simply come to the store, receive an explanation for the discharge, and leave, so it would not do anyone any good. He added that he could not talk to Bonnema about wages, since there was a union drive in progress, but referred to the fact that the Company was coming out with a new wage program.

Sometime during the same month Bob Cole, the grocery manager, asked Wallace whether Ron Darner, another employee, was heavily into the union drive. Wallace replied that

he was. Cole then asked Wallace how he himself felt about the Union. When Wallace replied that he was for it, Cole told him that he had seen the Harding's contract and stated that Family Foods employees were making more than they were.

Just before the election in January 1988, Cunningham also had occasion to talk with Elijah Harris, who was working at the ''big'' South Westnedge Street store at the time. Cunningham offered Harris some reasons why the latter should not vote for the Union, asserting that union people made less than employees at Family Foods. He then told Harris that the Company had a new wage program. He said that he could not say any more about it at that time but felt that the employees should give the Company a chance.

I credit the testimony of Ron Darner, a long-time employee of the Respondent, that in August 1977 he held a conversation with Grocery Manager Cole concerning the Union on the dock in back of the South Westnedge store. Cole said he would like to see a union come into the store because unionization would make piecework mandatory and his job as manager would become easier since, if any employee could not make his piecework rate, Cole could replace him.

I also credit Darner's testimony to the effect that, during the 3 weeks or so immediately before the election, he was taken out to restaurants on company time for coffee or meals by two high-ranking officials of the Company so they could privately discuss the forthcoming election with him. Just before Christmas, Company President Jack Duggan invited Darner to lunch at the Final Curtain Restaurant. During the course of this conversation Duggan told Darner that if the Union came into the store Tom Duthler Sr. would simply sell the Company. He asked Darner why Darner was involved with the Union. Darner replied that he wanted the people to get pay raises and medical insurance. Duggan complained that he thought that Tom Sr. did not like him, and this was the reason he had never gone anywhere with the Company. Duggan denied it was true. He said that the Company was thinking of opening a warehouse in Grand Rapids, and Tom Sr. had mentioned to him only recently that Darner might possibly be interested in supervising it. Darner said he was not interested in going to Grand Rapids.

A week or two later, in early January, Duggan invited him for coffee at Holley's Restaurant to discuss Darner's son. Darner's son had been fired from Family Foods for stealing a six-pack of beer and had also been arrested for doing so. Darner had tried to have him rehired but was unsuccessful. Duggan said that it was not possible to rehire the younger Darner but assured Darner that the Company would not use the police report if his son's new employer, another grocery chain, were to call for a reference. Duggan asked Darner if he wanted to speak with Tom Sr. concerning his son's problem.

A day or two later, Tom Sr. phoned Darner at the Patterson store and asked Darner to have breakfast with him. They met at a local Big Boy Restaurant. During the course of this conversation, Darner told Tom Sr. that store employees needed optical insurance, adding that ''even I need eye glasses.'' Tom Sr. suggested that Darner could go to Grand Rapids and see Tom Sr.'s eye doctor. Darner replied that his complaint was not merely on his own behalf but on behalf of all employees. Tom Sr. admitted to Darner that he could not sleep at night because he was worrying that the Union might win the election. Darner asked Tom Sr. why he was being singled out for special lunches and breakfasts with top company management. He also asked Tom Sr. whether it was his feeling that he could talk with other employees and persuade them not to vote for the Union. Tom Sr. said he thought Darner could. Darner asked whether they thought that the fact that Darner had been with the Company a long time would carry some weight with others. Tom Sr. said that he thought that it would. He also mentioned to Tom Sr. Duggan's earlier statement that he was being considered for a warehouse job in Grand Rapids. He also told Tom Sr. that he was losing money because he had been transferred from the South Westnedge store, a block or two from his house, to the Patterson Street store. He complained that use of the car was costing him $50 a week for gas and his wife was losing $30 a week because she could not continue with her babysitting job. He stated that his auto insurance had fallen due and that his tags had expired, so he wanted to be transferred back to the South Westnedge Street store where he would not need a car to get to work. Tom Sr. said that ''we will wait and see'' about a transfer, adding that he could not be transferred back to the South Westnedge Street store until after the election. Tom Sr. then asked Darner how much he needed. Darner said that he needed $150 for tags and insurance. Tom Sr. said he could not give him the money but would speak with the manager of the Patterson Street store about a loan. After the election, Tom Sr. saw Darner in the store and told him that he had set up an appointment for him with Tom Sr.'s eye doctor in Grand Rapids. Darner did not keep the appointment.

3. The organizational drive at Muskegon and the discharge of Lurleen Martin

Martin began working for the Respondent in its Muskegon store in July 1971. For most of her employment she worked as a cashier. In the fall of 1987, while the organizing campaign at the Kalamazoo stores was in progress, she received a call from Union Organizer Dick Knapp, who said that he had heard that Muskegon employees were also interested in organizing. The Respondent's store at Muskegon employs about 55–60 people. In September 1987, she met with Knapp and thereafter went to other union meetings attended by Muskegon store employees. Martin was active in pressing the union cause with these employees. She passed out cards to some of them. Her activities caught the notice of the store's management. Jeff Wellman, the store manager, was overheard by employee Scott DeMarr telling Assistant Store Manager Carlson that he would have to speak to her in his office about what she was doing. He did so, telling Martin that whatever she was doing was ''ok with him'' so long as she was not doing it on company time. Martin replied that she thought the employees should have a union because of low wages and lack of job security. Wellman went to her file, examined it, and told Martin that he had tried to get a wage increase through for her but it had been rejected by Tom Jr.

On October 28, 1987, Muskegon employee Carol Laude brought a doctor's slip to the office and gave it to Wellman. On this occasion, Wellman asked Laude if she had heard of any union activities at the store. Laude did not respond to the question. Wellman stated that they did not need a third

party in the store, the employees did not need a union, and it was his job to solve problems. He said he could not promise to solve all of them but he deserved a chance to try. He told Laude that he heard that she had been telling other employees that a union in the store would mean she would be guaranteed $7.45 an hour. He asked for her reply. She said nothing until Wellman mentioned the word ''guarantee,'' whereupon she said that she had not been guaranteed anything. Wellman then asked Laude if she was for or against the Union. She offered no reply.

On January 11, 1988, the Union filed a representation petition seeking an election at the Muskegon store. This event took place just 3 days before the election at the Kalamazoo stores. Sometime in middle or late January, Carlson spoke to Martin in the cash office and told her that Jack Duggan and Tom Jr. had visited the store. Her reply was that ''they were probably there to harass me.'' Carlson disagreed, saying that they would never do anything like that. He added, however, in reference to the union drive, that ''it would be a good idea if you kept this stuff out of the store.'' On the following day, Wellman called her into his office. He asked her if she remembered when he had told her that it was okay to engage in union activities if she did not do it on company time. Martin replied that she had not been doing it on company time. Wellman said he heard that she had obtained someone's address. Martin admitted doing so but said that she did not consider such activity to be soliciting. Wellman then told her that he did not want Martin bothering anyone unless both she and the other employee had both punched out.

In late February or early March, the Respondent held a breakfast meeting at a Muskegon restaurant called the Do Drop Inn. It was attended by six or seven employees. In the course of the meeting Tom Sr. asked the employees if there were any questions or if they had any problems. One employee, ''Rudy'' Rudicill, asked what it took to get a raise. Tom Sr. replied that this was not the proper time to talk about raises and that Wellman would speak with him privately concerning this subject in the store office. Tom Sr. went on to say that the Company was looking at a new wage and benefit package for employees, but he did not have all the facts and figures with him so he could not discuss it at that time. He also said that the Company had spent $86,000 on attorneys' fees. Duggan stated that the new wage program was all set but the Company was advised not to make it public ''until this whole thing about the Union was settled.'' Employee Scott DeMarr asked Duggan if anyone had any raises coming and if any raises had been withheld. Duggan said that everyone who had a raise coming had received it.

On a couple of occasions after the filing of the representation petition at Muskegon, Wellman asked DeMarr what was the general consensus of opinion among employees concerning unionization. In mid-March 1988, the Respondent held a luncheon meeting for employees at the Do Drop Inn. In attendance at this meeting were Tom Jr., Duggan, Wellman, and Carlson. Duggan announced that the Company had spent $1 million on new equipment and had plans to install new cash registers and other equipment at the Muskegon store within 90 days. Wellman asked the employees if they had any problems, comments, or suggestions, stating that if there were problems employees could bring them to the company management. Pat Bloom, a cashier, asked him about raises. She complained she had been promised a raise but had never received one and felt that she was underpaid for the work she was doing. Duggan did not reply to her question directly, but said the Company was looking into a new wage and benefit package. Bloom said that there were negative feelings at the store because the Company had promised things to employees in the past but had not delivered. She went on to ask what the ceilings were on different job classifications. Duggan said that there were different ceilings in different departments but that he did not have any specific details with him at that time.

The Muskegon store has five or six checkout lanes, two of which are regarded as express lanes. Most witnesses agreed, and I find, that assignments to the express lane were generally regarded by checkers as undesirable because the pace at those lanes was more hectic than at regular checkout lanes and customers were often more difficult to satisfy.[16] For that reason, the Respondent tries not to assign cashiers to the express lane 2 days in a row but sometimes it happens, especially if the cashier who has been assigned calls in sick.

On Wednesday, April 13, her last full workday, Martin worked an express lane. She was off on Thursday and reported to the store, as scheduled, at 9 a.m. on April 15. She began to work lane 2, a regular lane, while Corey Cook, a team leader, was working lane 3. Cook informed Martin that she was supposed to be on the express lane, not lane 2. Martin disputed this assertion, insisting that her name was not on the schedule for the express lane on that day.[17] She said she did not think that it was fair to be assigned to the express lane 2 days in a row, so she continued to wait on customers in lane 2. Cook instructed her to go to the express lane but she refused.

Cook went to the office and informed Carlson, who was in charge of the store that morning, that Martin had refused to change to an express lane. Carlson summoned Martin on the intercom but she did not respond, so he went up to the cash registers and instructed Martin to go to the express lane. She refused, saying that she was going to stay on lane 2 and finish waiting on the customer who was in line. Carlson turned out the light on lane 2, signifying that the lane was not in operation, and told Martin to follow him to the office.

After arriving at the office Carlson asked Martin why she did not want to run the express lane. She replied that she had run that lane on Wednesday and it was hectic. She suggested that Cook had been scheduled to run it. Carlson replied that Cook was not scheduled to run it and he did not want her to run it. Instead, he wanted Cook to take charge of the front end of the store because he was alone in the office and had work to do. Martin then noted that Juanita, another checker, was due to report for work at 10 a.m. She offered to run the express lane until Juanita came in. Carlson would not agree to this proposal while Martin indicated that she was still unwilling to work a full shift on the express lane, so Carlson sent her home and told her to report in on Sunday. Martin then left the store. Carlson then phoned Wellman, the store manager, who was then on vacation, and told Wellman what had occurred. Wellman instructed Carlson to phone Martin

[16] There is a suggestion in the record that a few checkers at Muskegon did not mind express lane assignments but this feeling apparently was not widely shared.

[17] I credit Martin's testimony to the effect that the posted schedule did not indicate that she was to work the express lane that day.

and to tell her that she was on an indefinite suspension. Carlson did so, informing Martin that she was ''off the schedule'' and should not report for work without first speaking with Wellman. He told her that Wellman would be getting in touch with her the following week.

When Wellman returned to the store the following Monday, he reported the incident to Tom Jr. by phone. Tom Jr. normally reviews discharge requests made by store managers and spent considerable time in reviewing the Martin case. His review included a discussion with Wellman and Carlson, as well as a trip to the Muskegon store from Grand Rapids to inspect Martin's personnel file. It did not include speaking directly to Martin. There is a small discrepancy in the record as to who decided to discharge Martin. Tom Jr. said that Wellman had recommended the discharge and that he had approved the recommendation. Wellman said that it was he who decided upon the discharge. There is no doubt at all that all of Respondent's management personnel involved in this incident agreed on the action which was taken. On Friday, April 22, Wellman phoned Martin and informed her that she was fired. He said that she could come to the store if she wished and discuss the matter with him, but she declined. He explained over the phone that she had refused on three occasions to run the express lane. She argued over his use of the word ''refused.'' Wellman said that he did not want Cook to run the express lane on the previous Friday, adding that, if Martin had experienced any problem on that lane, she could have called for additional help. Wellman also told her that he and Tom Jr. had jointly made the decision to discharge her.

4. Failure of the Respondent to evaluate employees at the Stadium Road store

In the past 3 years, the Respondent has evaluated its employees twice yearly, in June and in either November or December. In the fall of 1987, it employed 104 full-time and part-time employees at the Stadium Road store in Kalamazoo. Of this number, some 58 did not receive their November-December evaluations in a timely fashion.

There are certain exceptions to the Respondent's practice of giving twice yearly evaluations. New employees in their first 90 days of service and employees who are under disciplinary probation or who have just returned to good standing after being under disciplinary probation are not given such evaluations. Employees who have recently transferred from one store to another often do not receive these evaluations. Moreover, there are certain classes of employees, mainly janitorial and casual workers, who are not evaluated because they are in categories of employment that do not normally provide for wage increases. Most of the employees who did not receive evaluations during these months at Stadium Road fell into one of these categories. Four employees—P. Baldwin, K. Baxter, S. Griffin, and K. Johnson—should have received evaluations and did not. One or two other Stadium Road employees arguably should have received evaluations and did not. The Respondent stated that the reason for these departures from its normal policy was simple oversight on the part of John Renema, the store manager, and when these oversights were discovered, they were promptly corrected and evaluations were made.

B. *Analysis and Conclusions*

1. Independent allegations of conduct violating Section 8(a)(1) of the Act and related objectionable conduct

(a) As noted supra, Dykstra was at all times material a supervisor of Respondent, even though he was not put on the Respondent's payroll until November 9. When Tom Jr. instructed Dykstra to interrogate job applicants at the Oshtemo store after November 9 as to how they felt about the Union, the Respondent violated Section 8(a)(1) of the Act.

(b) When, in compliance with these instructions, Dykstra interrogated applicants at the Oshtemo store as to how they felt about the Union, the Respondent violated Section 8(a)(1) of the Act. Since these questions were asked after the filing of the representation petition, they constituted objectionable conduct to the election of January 14, 1988.

(c) Scheffler, in Dykstra's presence, spoke to Boogholt on the Saturday before the changeover and told Boogholt that he was not going to be hired. Boogholt had previously been informed that in fact he was going to be hired by the Respondent. Scheffler then told Boogholt, with Dykstra's obvious acquiescence, that the reason for the Respondent's change of mind was that the Company felt that if it kept all the old Harding's employees it would have to have a union and it did not want one. By virtue of this statement the Respondent violated Section 8(a)(1) of the Act. Since this statement was made following the filing of the representation petition, it also constituted objectionable conduct warranting the setting aside of the January 14, 1988 election.

(d) When Dykstra told Palmer that her chances for employment with the Respondent did not look good because the Union had just filed a petition, the Respondent violated Section 8(a)(1) of the Act. When he told other employees in the breakroom that ''I guess your union has really screwed you because the attorneys for Family Foods are now telling them that they can't hire as many people [as] they thought they could,'' the Respondent also violated Section 8(a)(1) of the Act. Because both statements were made following the filing of the representation petition, they also constituted objectionable conduct warranting the setting aside of the January 14, 1988 election.

(e) When Tom Jr. asked Albright what the general attitude of employees was concerning the Union, this interrogation was part and parcel of a systematic effort to intimidate employees and constituted coercive interrogation violating Section 8(a)(1) of the Act. Later, when Albright asked whether the Respondent could hire Engberts because of a pressing situation in the Engberts family, Tom Jr. told her that he could only hire 15 at the Oshtemo store because of the Union, the Respondent violated Section 8(a)(1) of the Act. The second statement by Tom Jr. was made after the filing of the representation petition and constituted objectionable conduct warranting the setting aside of the January 14, 1988 election.

(f) When Tom Jr. told Albright that the Respondent was going to transfer her to a prounion store so that she could campaign against the Union, the Respondent violated Section 8(a)(1) of the Act. This statement was made after the filing of the representation petition and constituted objectionable conduct warranting the setting aside of the January 14, 1988 election.

(g) When Dykstra told Rice and other members of the night crew that the Respondent had changed its mind and

was not going to hire the night crew ''due to your great union,'' the Respondent violated Section 8(a)(1) of the Act. This statement was made after the filing of the representation petition and constituted objectionable conduct warranting the setting aside of the January 14, 1988 election.

(h) When Dykstra told Cathleen Dean that she was not going to be hired because ''we were told we have to cut ten more people due to the union vote,'' the Respondent violated Section 8(a)(1) of the Act. This statement was made after the filing of the representation petition and constituted objectionable conduct warranting the setting aside of the January 14, 1988 election.

(i) When, in the course of a job interview, the Respondent's Stadium Road manager asked Dean how she felt about a union and whether she would vote for one, and when he told her to put on her application that she was not a union member, the Respondent violated Section 8(a)(1) of the Act. These statements were made after the filing of the representation petition and constitute objectionable conduct warranting the setting aside of the election.

(j) When Dykstra told Tim Johnson and Sharon Schlee that Family Foods' attorneys had phoned to say that only 13–15 employees from Harding's Oshtemo store could be hired because of the Union, the Respondent violated Section 8(a)(1) of the Act. This statement was made after the filing of the representation petition and constituted objectionable conduct affecting the result of the January 14, 1988 election.

(k) Renema asked Iciek how she was going to vote in the forthcoming representation election and told her that she was obligated to answer his question. He also asked her why she was leaning toward voting for the Union. When she told him her reasons, Renema suggested that she talk with other employees who had worked in union stores, adding that she should not make a dumb decision by voting for the Union. His questions constituted coercive interrogation by which the Respondent violated Section 8(a)(1) of the Act. Because this questioning took place after the Union filed the representation petition, it amounted to objectionable conduct affecting the result of the election of January 14, 1988.

(l) The following day Renema renewed his questioning of Iciek and, in her presence, asked employee Brett how he was going to vote in the forthcoming election. He asked Brett to explain to Iciek what happened to him as an employee in a unionized store. After receiving Brett's reply, he turned to Iciek and asked her privately if working conditions at the Stadium Drive store were really so bad. This repeated and intense questioning constituted coercive interrogation in violation of Section 8(a)(1) of the Act. Since it took place after the filing of the representation petition, it also amounted to objectionable conduct affecting the result of the election of January 14, 1988.

(m) Renema then told Iciek that if the Union came into the store, employees would lose a number of privileges and amenities in the working conditions they presently enjoyed and that they could be penalized by the Union for working off the clock or doing anything outside their job descriptions. His statements constituted a threat in violation of Section 8(a)(1) of the Act. Since they were made following the filing of the representation petition, they also amounted to objectionable conduct affecting the result of the election of January 14, 1988.

(n) On October 12, 1988, Cunningham asked Cooke if she had heard any union talk in the ''big'' South Westnedge Street store. He then asked what he, as store manager, could do to make things better and what were the main issues among employees. His statements constituted coercive interrogation in violation of Section 8(a)(1) of the Act and a solicitation of employee grievances with a view toward adjustment, all of which violated Section 8(a)(1) of the Act.

(o) Cunningham then went on to ask her if she had heard anything about the Company's new wage program. When she said she had not, Cunningham told her that Tom Jr. had done most of the work on it and that a couple of other employees who had worked on it were currently on vacation. Cunningham went on to say that the Company would raise wage caps on employees who were ''capped out,'' i.e., who were making the maximum amounts permitted in their job classifications under the existing wage scale. This statement was made in the context of an organizing drive and the questioning of an employee concerning the union activities and sentiments of her fellow workers. As such, it constituted a promise of benefits to employees in the event they rejected unionization and a violation of Section 8(a)(1) of the Act. It was also a solicitation of employee grievances with a view toward adjustment, in violation of Section 8(a)(1) of the Act.

(p) In the course of the same antiunion conversation, Cunningham told Cooke he had heard bad things about her but was inclined to discredit such reports. He added that unionization would mean that it would be easier for management to fire employees than at present. These remarks constitute a threat of discharge or other adverse action by the Respondent in the event of unionization. This threat was aimed both at Cooke and at store employees generally, whom Cunningham had been denouncing for an assortment of shortcomings, and violated Section 8(a)(1) of the Act.

(q) Cunningham also told Cooke that he knew that she was a union supporter because he had seen her pass out union cards. By this statement he gave her the impression that her union activities were the subject of company surveillance and thereby violated Section 8(a)(1) of the Act.

(r) Klok asked Wallace what he thought of a management campaign meeting which had just taken place. After receiving an answer, he told Wallace that if the Union came in the Respondent would close some of its stores and suggested that Harding's was a case in point. These statements constitute, respectively, coercive interrogation and a threat to close a store in reprisal for unionization. Both are violations of Section 8(a)(1) of the Act.

(s) Klok went on to tell Wallace that if the Union came in the employees would not get a contract until a point in time more than a year from the date of the conversation, stating that the signing of a contract would be delayed through legal maneuvers. In light of the massive and varied unfair labor practices committed by this Respondent in an effort to defeat unionization, I conclude that the import and meaning of Klok's remarks was that the Respondent would engage in surface bargaining and other stalling tactics in order to make unionization essentially futile. Accordingly, I conclude that these remarks violated Section 8(a)(1) of the Act. Because this statement was made after the Union filed the representation petition in this case, it also amounted to objectionable conduct which affected the result of the election of January 14, 1988.

(t) Cunningham told Bonnema that unionization would make the discharge of employees easier than it presently was and that union representatives would provide no worthwhile assistance in the event of such discharges. The statement constitutes a threat to reduce job security in the event of unionization by discontinuing any present protections, whatever they might be, which might safeguard employees from arbitrary discharge. As such, the statement constitutes a violation of Section 8(a)(1) of the Act. Because it was made after the Union filed the representation petition in this case, it was also objectionable conduct which affected the result of the election of January 14, 1988.

(u) Cunningham also mentioned to Bonnema, as part of his effort to convince Bonnema not to vote for the Union, that the Company was coming out with a new wage program, adding that he was not at liberty to discuss it in detail at that time. Such a statement constitutes a teasing promise of an unspecified wage increase and violates Section 8(a)(1) of the Act. Since it was made after the Union filed the representation petition in this case, it was also objectionable conduct which affected the result of the election of January 14, 1988.

(v) Grocery Manager Bob Cole asked employee Wallace if Darner, another employee, was heavily into the union drive. He also asked Wallace how he himself felt about unionization. Such questioning constituted coercive interrogation and violates Section 8(a)(1) of the Act. Since it occurred after the Union filed the representation petition in this case, it was also objectionable conduct which affected the result of the election of January 14, 1988.

(w) Cunningham told Harris in January 1988, in the course of an antiunion statement, that the Company had a new wage program. While stating that he could not say anything more to Harris about the wage program at that time, Cunningham also told Harris that he felt the employees should give the Company a chance. This statement constituted a promise of benefits if the employees rejected unionization and is a violation of Section 8(a)(1) of the Act. Because the statement was made after the Union filed a representation petition in this case, it was also objectionable conduct which affected the result of the election of January 14, 1988.

(x) Cole told Darner that he would like to see unionization since unionization would bring about piecework and make the discharge of employees easier when they did not work hard enough to make their rate. This statement constituted a threat to remove present company protections, if any, against arbitrary discharge in the event that employees unionized and violated Section 8(a)(1) of the Act.

(y) Just before Christmas, Duggan invited Darner to lunch for the purpose of discussing the forthcoming representation election. Buying Darner a lunch in the context of focusing upon him unusual and unprecedented personal attention constituted the granting of a benefit to vote against the Union and is a violation of Section 8(a)(1) of the Act. During the conversation, Duggan told Darner that if the Union came in Tom Sr. would sell the Company. This constituted a threat of reprisal for engaging in union activities and violated Section 8(a)(1) of the Act. Duggan then asked Darner why he was supporting the Union. In this context, his question constituted coercive interrogation in violation of Section 8(a)(1) of the Act. Duggan also told Darner that the Company was contemplating the opening of a warehouse in Grand Rapids and was considering Darner as a possible warehouse supervisor or manager. This statement constituted a promise of benefit for rejecting unionization and violated Section 8(a)(1) of the Act. Since these statements and questions were posed after the filing of the representation petition in this case, they constituted objectionable conduct which affected the result of the election of January 14, 1988.

(z) Duggan's second meal with Darner also constituted the conferring of a benefit to reject unionization in violation of Section 8(a)(1) of the Act. During that conversation, he assured Darner that while the Company could not rehire his son it would avoid giving him an unfavorable reference to another employer. This statement, viewed in the context of Duggan's vigorous pursuit of Darner's vote in the forthcoming representation election, constituted a promise of benefit in violation of Section 8(a)(1) of the Act. Since the statement was made after the filing of the representation petition in this case, it constituted objectionable conduct which affected the result of the election of January 14, 1988.

(aa) Tom Sr.'s action in inviting Darner for breakfast and buying him coffee or a meal, which was done in the context of focusing upon him unusual and unprecedented personal attention, constituted the granting of a benefit to vote against the Union and a violation of Section 8(a)(1) of the Act. Tom Sr.'s offer to Darner that he go to Grand Rapids and see Tom Sr.'s eye doctor, made when Darner complained about the absence of optical coverage in the Company's health insurance program, was also the granting of a benefit to an employee to vote against the Union and a violation of Section 8(a)(1) of the Act. Tom Sr.'s offer to speak to the store manager in order to arrange a loan for Darner so he could purchase auto tags and pay an insurance premium is the granting of a benefit to vote against the Union and a violation of Section 8(a)(1) of the Act. Tom Sr.'s suggestion to Darner that the latter would carry great weight with other employees if he were to campaign against the Union amounts to a request that he do so and was a violation of Section 8(a)(1) of the Act. These statements by Tom Sr. were made after the filing of the representation petition in this case and constituted objectionable conduct which affected the result of the election of January 14, 1988.

(bb) The Respondent has a general company rule which forbids in-house solicitations during the actual working time of an employee solicitor or an employee being solicited. In the fall of 1987, when Martin began to approach Muskegon employees to join the Union, she was told by Wellman, the store manager, that whatever she was doing was ''ok with him'' so long as she was not doing it on ''company time.'' The use of the phrase ''company time'' in forbidding solicitations has generally been held to be excessively broad. However, in a later conversation with Martin, Wellman clarified what he meant in restricting her union activities at the store. She was instructed that she could solicit only when both she and the person she was talking to were not supposed to be working. This explanation brought Wellman's instructions into line with written company policy. In light of the stated no-solicitation rules in a handbook which is distributed to all employees and Wellman's clarifying explanation to Martin, I conclude that his use of the magic phrase ''company time'' did not create or impose an overly broad no-solicitation rule under the circumstances of this case, and that the restrictions communicated to Martin were substan-

tially in accordance with Board law. Accordingly, I would dismiss so much of the consolidated complaint that alleges that the Respondent promulgated or enforced an overly broad no-solicitation rule by virtue of Wellman's instructions to Martin.

(cc) During a conversation in the office at the Muskegon store, Wellman asked Laude if she had heard about any union activities in the store. He also asked her whether she was for or against the Union. These questions constitute coercive interrogation and violate Section 8(a)(1) of the Act. Wellman also told Laude that he had heard that she had been telling other employees that she would be ''guaranteed'' $7.45 an hour if the Union won. This statement constituted the creation of an impression among employees that their union activities were the subject of company surveillance and violated Section 8(a)(1) of the Act.

(dd) In January, Carlson spoke to Martin in the cash office of the Muskegon store with reference to the union drive. He told her that it would be a good idea ''if you kept this stuff out of the store.'' His statement went far beyond the Respondent's published no-solicitation rule and amounted to an instruction to Martin that she engage in no union activities at any time on company premises. Such a no-solicitation restriction is clearly overbroad and violates Section 8(a)(1) of the Act.

(ee) At an employee breakfast meeting at the Do Drop Inn, Tom Sr. told Muskegon employees that the Company was looking at a new wage and benefit package, but he did not have all the facts and figures with him so he could not discuss it. Duggan stated at the same time that the new wage program was all set but the Company had been advised not to make it public ''until this whole thing about the Union is settled.'' Since these remarks were made after the filing of a representation petition at the Muskegon store, they were an obvious inducement to employees to reject the Union and thus a promise of benefit which violated Section 8(a)(1) of the Act. The remarks made by these high-ranking company officials came in response to a question by Tom Sr. in which he asked employees whether they had any problems. A response he received came from employee Rudicill who asked what it took to get a raise. Accordingly, Tom Sr.'s introductory question constituted a solicitation of grievances with a view toward adjustment and violated Section 8(a)(1) of the Act.

(ff) At a later meeting of Muskegon employees with company officials at the Do Drop Inn, it was Wellman who asked if employees had any problems, comments, or suggestions. He told those who had assembled that they could bring their problems to the attention of company officials. When Bloom asked him about raises and complained about the money she was making, Duggan again said that the Company was looking into a new wage and benefit package. These statements by management officials constituted solicitation of grievances with a view toward adjustment in violation of Section 8(a)(1) of the Act. Duggan's reply constituted a promise of benefit designed to discourage union support and violated Section 8(a)(1) of the Act.

2. Refusal of the Respondent to hire former Harding's employees

The Respondent's refusal to hire most of the former Harding's employees when it took over the Harding's stores at Oshtemo and Portage in November 1987 must be viewed against a background of intense and widespread animus which permeated the Respondent's entire system, and which was evidenced in this proceeding by well over 30 itemized violations of the Act. These violations included promises of increased wages and benefits, threats to close the store or otherwise jeopardize employees' job security, solicitation of grievances for the purpose of adjusting them, coercive interrogation relating to the union activities both of the interrogated employee and other employees in the store, and flat statements to Harding's employees that they were not going to be hired because the Respondent wanted to hire only a minority of unionized employees at either Oshtemo or Portage, so it could avoid bargaining with incumbent unions or could defeat the Union which had just filed a petition for a representation election.

There is no factual dispute that the Respondent's initial hiring decisions resulted in a situation in which a majority of ex-Harding's employees did not exist at the outset of the Respondent's operation in any of the three bargaining units which were under contract in the former Harding's stores. At Oshtemo, the Respondent hired only one of the three unit employees in the small Meatcutters unit. In the larger unit represented by Local 951, the Respondent hired 15 ex-Harding's employees in an original employee complement of 35. This unit has since expanded to nearly twice the size it was when the store opened on November 9, 1987. At Portage, the Respondent hired only 6 ex-Harding's employees in an initial complement of 20 employees. One of those employees to whom a job was offered declined. This unit has also grown considerably since the Respondent took over the operation.

There is an admission on the record by Tom Jr. that he was advised by the company attorney that if the Respondent hired a majority of Harding's employees in a bargaining unit, he would have to recognize and bargain with the incumbent union.[18] Tom Jr. interviewed a large number of employees at Oshtemo 2 days before the Union filed a representation petition covering four of the Respondent's Kalazamoo stores but excluding both Oshtemo and Portage. He made a tentative judgment to hire 25 Oshtemo employees but abruptly changed his mind after hearing from his lawyer. Dykstra was present when Tom Jr. received a phone call from the company lawyer. While Dykstra did not hear the entire conversation, it is clear from other evidence that Tom Jr.'s change of mind concerning the number to be hired at Oshtemo resulted from legal advice received concerning the obligation of successors to bargain with incumbent unions. Dykstra conveyed this conclusion to various bargaining unit employees. The Respondent is bound by these statements, and there is no reason on the basis of other credible evidence in this record to conclude that they were inaccurate in any way.

Tom Jr.'s explanation borders on the preposterous as to why he did not carry over all the members of the Oshtemo bargaining unit from Harding's to the Respondent's store. His explanation for the hiring pattern at Portage is equally unconvincing. All the employees in the Oshtemo meat de-

[18] Since the General Counsel made no allegations in the consolidated complaint that the Respondent violated Sec. 8(a)(3) of the Act, it is not necessary to determine whether the Respondent had a bargaining obligation based upon a successorship theory notwithstanding a discriminatory hiring practice aimed at avoiding such an obligation.

partment had already been hired by the Respondent's vice president in charge of that department; Tom Jr. had to countermand this action after engaging in an internal turf fight with the company official who had offered employment to these individuals. After opening the Oshtemo store with only one carryover meat department employee in that bargaining unit, the Respondent promptly transferred additional employees into that department from its other stores to take up the slack and hired a full-time meatcutter trainee to replace a man who had satisfactorily performed that job for 31 years. Although there was never a question concerning the qualifications of the two meat department employees who were not hired, Tom Jr. said he had reversed Bouwknegt's hiring decision because he did not want to hire an entire department intact, reasoning that such an action would cause bad feelings in other departments which were not also hired intact. However, Tom Jr. had no reluctance to hire a majority of the members in the deli department and keep that department intact. The difference between the two situations was that the meat department was a separate bargaining unit, while the deli department was only a small part of the overall store unit. Hiring a majority of the meat department employees meant dealing with the Meatcutters Union while hiring a majority of the deli department did not carry with it any bargaining obligation. Accordingly, I conclude that by refusing to hire meat department employee Luwanda Mast and Gerritt Boogholt, the Respondent discriminated against them because of their membership in the Meatcutters Union in violation of Section 8(a)(1) and (3) of the Act.

To achieve its goal of hiring only a minority of ex-Harding's employees in any bargaining unit while making it appear that these employment numbers actually arose from the job interviews he conducted, Tom Jr. engaged in a lengthy and tedious subterfuge[19] of disqualifying applicants whom, in many instances, he had earlier considered for hire. The reasons he gave were, for the most part, either frivolous or wholly unfounded objections. At its Stadium Road store, located near the campus of Western Michigan University (WMU), Respondent hires a large number of WMU students and has a policy of accommodating the class schedules and vacation schedules of these students in assigning working hours. However, at Oshtemo and at Portage it made no such accommodations. Any applicant who said he or she preferred full-time employment or preferred to avoid Sunday or evening work was given a low rating in Tom Jr.'s revised hiring criteria, because he assertedly wanted job applicants who were infinitely flexible as to their availability. The expression by an applicant of a preference for full-time or weekday employment was taken by Tom Jr. to mean an insistence on such working arrangements when, in fact, no such insistence was either intended or stated. Tom Jr. gave low ratings to older and more experienced employees; he even admitted that, in his mind, experience on the job was a disqualifying factor. However, as to managerial employees, the Respondent had sufficient confidence in Dykstra's ability that he continued to be its store manager at Oshtemo until he quit. It also had sufficient confidence in the ability of Hanson that he was kept on as the assistant store manager at Portage. In fact, it assigned to store managers at each of these locations the responsibility of hiring employees once the store was in operation. With one or two exceptions, these managers had recommended the retention of all the employees who had worked for them. However, Tom Jr. said he paid little attention to their recommendations in fashioning the initial complements of employees at both locations, while admitting that the Harding's store managers were better qualified than he to evaluate the job performances and potential of the people they had worked with than would a stranger such as Tom Jr. His excuse for doing so was that he alone possessed the ability to select employees who would best fit the Respondent's new and revised method of operation. Indeed Tom Jr. was best suited for this task if, by new and revised method of operation, he meant operating on a nonunion rather than a union basis. In selecting employees for retention, the Respondent's overall goal was to ensure that it would not be faced with the legal responsibility for bargaining with incumbent unions. After a stipulated election agreement was signed in late November calling for an election in a six-store unit, its strategy shifted to an effort to defeat unionization at its other four stores as well as at the two acquisitions from Harding's. Once the Respondent had surmounted the labor relations hurdles which it faced by the purchase of two stores having full complements of unionized employees,[20] and after it had defeated the Union at the January 14 election, it was once again amenable to hiring ex-Harding's employees, notwithstanding their suspected union sympathies. In fact, a number of these applicants were told by Duggan, Dykstra, and possibly others that they would be seriously considered for employment after the election and that they should file applications which could be acted upon in January or thereafter. This restriction on the hiring of ex-Harding's employees is, in and of itself, a violation of Section 8(a)(1) and (3), and I so find.

The ex-Harding's employees who were not hired at Oshtemo and Portage at the outset of the Respondent's operation were discriminated against as a class, so the members of that class need not be identified ln toto until the compliance stage of these proceedings. *Spencer Foods, Inc*., 268 NLRB 1482 (1984), enfd. sub nom. *Commercial Workers Local 152 v. NLRB*, 768 F.2d 1463 (D. C. Cir. 1985). Because the Respondent set rigid quotas on the hiring of ex-Harding's employees in order to carry out its unlawful labor relations strategy, it was impossible for more than a severely limited number to gain acceptance on the Respondent's payroll, regardless of their qualifications and regardless of whether they made formal application. The entire application and interview process had been reduced to a charade because the Respondent's decisions in fashioning initial complements of employees at both stores came to be based upon considerations totally apart from what was occurring during the formal hiring process which had initiated. Accordingly, I would not limit the class of discriminatees to those who made formal application to work for the Respondent or who took part in the interview process. I would exclude from that class only the former Harding employee at Portage who was offered employment by the Respondent and then declined. Cf.

[19] Tom Jr. was a poor and unconvincing witness, and I do not credit any testimony he gave unless it was corroborated by other evidence.

[20] Both stores were covered by contracts containing union-security clauses requiring union membership on the part of employees with more than 30 days' service. There is no suggestion in this record that any ex- Harding's employee was not a union member, except for new hires who were not yet covered by the union-security clause.

Kessel Food Markets, 287 NLRB 426 (1988), enf. 868 F.2d 881 (6th Cir. 1989). By refusing to hire former Harding's employees at its Oshtemo and Portage stores because of their union membership, the Respondent violated Section 8(a)(1) and (3) of the Act.

3. The discharge of Lurleen Martin

On April 22, 1988, the Respondent discharged cashier Lurleen Martin for several related acts of insubordination committed at its Muskegon store on the preceding Friday, April 15. There is no doubt that Martin was insubordinate. She reported to work on a regular cashier lane, was told to work the express lane, and refused. Although she later agreed to work the express lane for an hour until another cashier was scheduled to report for work, the assistant manager then in charge of the store declined the offer and sent her home, telling her to report back on Sunday. After conferring with the store manager by telephone, he phoned her again and instructed her not to return until clearing with the store manager, who was then on vacation and was not scheduled to return until Monday. The next communication Martin received from the Respondent was a phone call the following Friday informing her that she was fired.

There can be little doubt that Martin was in fact insubordinate on the morning in question. However, this conclusion does not end the inquiry. The General Counsel claims that insubordination was a pretext for the discharge of a well-known union activist, who was described in the record by another employee as the ''spearhead'' of the Union's organizing drive at the Muskegon store. Discharge was the treatment accorded to a 17-year employee with an excellent work record by a respondent whose massive antiunion onslaught, detailed above, included heavy-handed intimidation and transparent subterfuge aimed at destroying union majorities in three bargaining units and to defeat an election drive in a fourth and larger one. The Respondent was no more amenable to unionization in Muskegon than in Kalamazoo, and it was Martin who was responsible for the fact that a representation petition was pending in the Muskegon bargaining unit. She had been told by Carlson to ''keep that thing out of the store'' and she did not comply with his order. In fact, she had even filed an unfair labor practice charge against the Respondent. While the General Counsel did not elect to argue that her discharge was also a violation of Section 8(a)(4), Martin's action in resorting to the processes of a public agency at least served to make her a more conspicuous union activist in the eyes of the Respondent.

Running the express lane is regarded as a stressful and undesirable assignment. For that reason, asking a cashier to run the express lane 2 days in a row is a practice which the Respondent has tried to avoid. Respondent placed in evidence a list of a few instances during the spring of 1988 when two consecutive assignments to the express lane had been made, but these occurrences were unusual. When consecutive assignments did take place, they were usually not made for two full shifts. When Martin was instructed to run the express lane by Carlson, she made a counteroffer which was in line with the Respondent's past practice, namely to work out the problem which had arisen by continuing to run the express lane until another cashier could take over. For reasons unexplained, her offer was unsatisfactory to Carlson. He sent her home, telling her to report back on Sunday.

Tom Jr. testified that it is automatic under company practice for insubordination to result in discharge, but he could point to only one other instance in his experience when it did. The General Counsel, arguing that a union activist was being subjected in this situation to disparate treatment, adduced evidence of other instances in the Respondent's stores when insubordination had not resulted in discharge or indeed in any discipline other than a verbal reprimand. Tom Jr. later contradicted his flat assertion about the automatic character of the insubordination discharges by stating that he had carefully examined the personnel file of Martin and the facts and circumstances surrounding this event to see if there might be any mitigating circumstances which would affect her case.[21] He found none. The record in this case indicates that, as far as this Respondent is concerned, insubordination is sometimes grounds for discharge and sometimes not. Carlson's immediate reaction to the incident—sending Martin home to cool off for a couple of days with orders to report back on Sunday—is a good indicia of the level of seriousness of the incident and the appropriate response under normal Company practice. A day off would have settled the incident if upper management had not gotten into the picture.

Terminating a competent and reliable employee with 17 years of service for one brief outbreak of temper is within this Respondent's prerogative under the Act if that is what it really did. However, it is motivation, not justification, which determines whether a discharge is or is not discriminatory. I do not believe that Martin's run in with Carlson would have gone so far were she not a leading union activist in a company dedicated to stamping out a union effort at all cost. Her discharge was part of that cost, and because it was, it violated Section 8(a)(1) and (3) of the Act. I so find and conclude.

4. Failure of the Respondent to evaluate employees at the Stadium Drive store

The General Counsel alleged that, throughout its entire system, the Respondent withheld biennial evaluations of employees in the fall of 1987 in order to hold a potential threat over their heads and intimidate them into voting against the Union at the January 14 election. No evidence was presented respecting any store other than the one at Stadium Drive. The evidence there consisted of a statement made in an offhand way by Store Manager Renema to employees Brett and Iciek that he had not given evaluations to everyone at the Stadium Drive store before the election because the Union might consider it an unfair labor practice. All but about six of the employees at Stadium Drive who were supposed to receive evaluations in November and December 1987 in fact received them. The Respondent's explanation for its failure to provide timely evaluations for those six employees was managerial oversight; and when its omission came to the attention of Renema, he moved to promptly rectify it by making the required evaluations. While a veritable mountain of unfair labor practices can be laid at the feet of this Respondent, it is not necessary to conclude that its every act or omission in the area of personnel management was marred by discriminatory intent. There is no specific evidence linking

[21] His investigation did not include speaking with Martin to ascertain her side of the story, an omission the Board has often relied on as a factor in establishing the discriminatory nature of a discharge.

these omissions to the antiunion campaign which was then in progress, so I am inclined to accept the Respondent's explanation for what occurred at the Stadium Drive store at face value. In so doing, I recommend that so much of the consolidated complaint which alleges that the Respondent violated Section 8(a)(1) of the Act by withholding periodic evaluations from employees at the Stadium Drive store and elsewhere be dismissed.

On the foregoing findings of fact and conclusions of law, and on the entire record considered as a whole, I make the following

CONCLUSIONS OF LAW

1. Family Foods, Inc. is now and at all times material has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers International Union, AFL–CIO–CLC, Locals 539 and 951 are, respectively, labor organizations within the meaning of Section 2(5) of the Act.

3. By discharging Lurleen Martin because of her activities on behalf of Local 951; by refusing to hire former employees of Harding's Friendly Foods immediately after purchasing the Harding's stores at Oshtemo and Portage, Michigan, because of the membership of these employees in both unions and their activities on behalf of both unions; and by refusing to hire other job applicants who had worked for Harding's Friendly Foods until after the holding of a representation election, because of the membership of these employees in Local 951 and their activities on behalf of that union, the Respondent violated Section 8(a)(3) of the Act.

4. By the acts and conduct set forth above in Conclusion of Law 3; by coercively interrogating employees concerning their union activities and the union activities of other employees; by creating in the minds of employees the impression that their union activities are the subject of company surveillance; by promising employees a new wage and benefit package if they reject the Union as their bargaining agent; by threatening to close stores or sell the business if the employees unionized; by instructing a management employee to interrogate job applicants concerning their union sympathies and by the carrying out of these instructions; by telling employees that they were not going to be hired because the Union filed a representation petition or because the Company had imposed a quota on the hiring of union members; by telling employees to place on their job application forms an indication that they were not union members; by threatening to discontinue existing benefits if employees became unionized; by threatening to reduce or eliminate existing job security protections if employees voted for the Union; by stating that unionization was an act of futility because the Company would use legal maneuvers to forestall and delay meaningful collective bargaining; by soliciting employee grievances with a view toward adjusting them; by promising to give an employee's relative a favorable reference, agreeing to arrange a personal loan and optical treatment, and buying an employee meals and conferring upon an employee unusual and unprecedented personal attention to persuade him to vote against the Union; by asking employees to campaign against the Union; by imposing upon an employee an overly broad no-solicitation rule, the Respondent violated 8(a)(1) of the Act. Those acts which occurred in and about Kalamazoo, Michigan, between October 30, 1987, and January 14, 1988, amounted to objectionable conduct affecting the result of a representation election held on January 14, 1988.

5. The aforesaid unfair labor practices and objectionable conduct have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices and objectionable conduct affecting the result of a representation election, I will recommend that the Respondent be required to cease and desist therefrom and to take other affirmative actions designed to effectuate the purposes and policies of the Act. Because the violations of the Act found herein are repeated and pervasive and evidence a continuing disposition on the part of this Respondent to ignore and violate the rights of its employees, I will recommend a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). I will recommend that the Respondent be required to reinstate Lurleen Martin to her former position, without prejudice to her seniority or to other benefits that she may have enjoyed. I will also recommend that the Respondent be required to offer to every former employee of Harding's Friendly Foods who was employed at the Oshtemo and Portage stores at the time those stores were acquired by the Respondent and who was not hired or offered employment when those stores were acquired, employment which is substantially equivalent to the employment which they enjoyed with Harding's Friendly Foods, and to make whole Martin and all the former Harding's employees at Oshtemo and Portage for any loss of pay or benefits which they may have suffered by reason of the discriminations found in this case, in accordance with the formula set forth in the *Woolworth* case,[22] with interest thereon computed at the short-time Federal rate used to compute interest on underpayments and overpayments of Federal income taxes under the Tax Reform Act of 1986. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I will further recommend that the Respondent be required to remove from Martin's personnel files any disciplinary notices and that she be informed in writing of this action and that these disciplinary notices will not be used as a basis for future disciplinary actions. I will also recommend that the Respondent be required to post the usual notice, advising its employees of their rights and of the results in this case.

[Recommended Order omitted from publication.]

[22] *F. W. Woolworth Co.*, 90 NLRB 289 (1950).